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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181732
Party	Defendant Zimmer Technology, Inc.
Correspondence Address	Gerard T. Gallagher Baker & Daniels LLP 202 S. Michigan Street Suite 1400 South Bend, IN 46601 UNITED STATES sbteas@bakerd.com
Submission	Answer
Filer's Name	Gerard T. Gallagher
Filer's e-mail	sbteas@bakerd.com
Signature	/Gerard T. Gallagher/
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Attachments	Answer.pdf (4 pages)(158958 bytes)

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Arthrex, Inc.)	
)	
Opposer)	Opposition No.: 91181732
)	
v.)	Mark: TRANSFX
)	
Zimmer Technology, Inc.)	Serial No.: 78/717,996
)	
Applicant.)	

APPLICANT'S ANSWER

Applicant, Zimmer Technology, Inc., hereby answers the Notice of Opposition filed by Opposer, Arthrex, Inc. as follows:

1. Opposer owns United States Trademark Registration No. 2,501,225 registered on October 30, 2001 for TRANSFIX for use with "arthroscopic surgical implant comprising artificial material" in International Class 10. Opposer's registration is valid and in full force and effect. Additionally, the registration has become incontestable. This registration serves as conclusive evidence of Opposer's exclusive right to use the mark. A copy of a print-out from the United States Patent and Trademark Office website regarding this registration is attached as Exhibit A.

ANSWER: Applicant denies the allegation that the "registration serves as conclusive evidence of Opposer's exclusive right to use the mark." Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 1 and, therefore, denies same.

2. Opposer has used the trademark TRANSFIX since at least 1997, and before any date upon which Applicant can rely, in connection with its goods and is continuing to do so.

ANSWER: Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 2 and, therefore, denies same.

3. On information and belief, Applicant is a corporation with offices at 150 North Wacker Drive, Suite 1200, Chicago, Illinois 60606.

ANSWER: Applicant admits the allegations of paragraph 3.

4. On information and belief, Applicant, Zimmer Technology, Inc., filed United States Trademark Application No. 78/717,996 on September 21, 2005 to register TRANSFX for use with "medical device, namely, an external fixation system for bone securement and stabilization comprised of aluminum, titanium; stainless steel or carbon fiber bone anchors, pins, rods, rings, wires and clamps" in International Class 10 and cited a date of first use of December 31, 2000.

ANSWER: Applicant admits the allegations of paragraph 4.

5. Opposer has superior rights as compared to Applicant. Opposer has used and registered their TRANSFIX trademark prior to Applicant's filing date of September 21, 2005 and first use date of December 21, 2001. Opposer has continuously used the trademark TRANSFIX through the United States for many years.

ANSWER: Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5 and, therefore, denies same.

6. Applicant's TRANSFX mark is similar in sight, sound and commercial impression to Opposer's TRANSFIX mark and will be used on goods that are closely related to the goods listed in Opposer's Registration No. 2,501,225 for TRANSFIX. The businesses to which Applicant markets and sells its goods are likely to be the same businesses to which Opposer markets its goods (such as hospitals).

ANSWER: Applicant denies that it TRANSFX mark is similar in sight, sound and commercial impression to the TRANSFIX mark. Applicant is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 6 and, therefore, denies same.

7. Applicant's TRANSFX mark so resembles Opposer's TRANSFIX trademark as to be likely, when applied to the Applicant's goods, to cause confusion, mistake, or to deceive as to the source of origin of Applicant's goods.

ANSWER: Applicant denies the allegations of paragraph 7.

8. Based on the similarities of the marks and the goods, consumers are likely to associate the goods sold by Applicant under the mark TRANSFX with Opposer or Opposer's goods or to believe that Applicant's goods are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer.

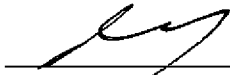
ANSWER: Applicant denies the allegations of paragraph 8.

9. Any use of the mark TRANSFX by Applicant is likely to cause confusion, cause mistake or deceive the public and cause the public to believe that the goods sold and offered under the TRANSFX mark emanate from or are otherwise sponsored by or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

ANSWER: Applicant denies the allegations of paragraph 9.

WHEREFORE, applicant respectfully requests that U.S. Trademark Opposition No. 91181732 be dismissed with prejudice and that applicant's U.S. Trademark Application Serial No. 78/717,996 proceed to registration.

Respectfully submitted,

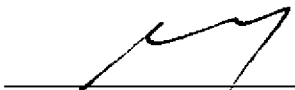


Gerard T. Gallagher, Reg. No. 39,679
BAKER & DANIELS
202 South Michigan Street
Suite 1400
South Bend, IN 46601
Telephone: (219) 234-4149
Fax: (219) 239-1900

Attorneys for Applicant

CERTIFICATE OF SERVICE

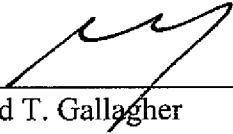
The undersigned hereby certifies that a true copy of the foregoing has been served upon Karin H. Butchko, Carlson, Gaskey & Olds, P.C., 400 West Maple Road, Suite 350, Birmingham, MI 48009, by placing the same in the United States Mail, postage prepaid, this 14th day of February, 2008.



Gerard T. Gallagher

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being served upon the United States Patent and Trademark Office via electronic delivery to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451, this 14th day of February, 2008.



Gerard T. Gallagher